

NOTE:

The allegations and decision in this case fall under old rules. It has been classified under the most relevant of the current code sections and subsections.

Tape in file

IOWA BOARD OF EDUCATIONAL EXAMINERS

INDIANOLA COMMUNITY)	
SCHOOL DISTRICT,)	Case No. 01-14A
Dr. THOMAS NARAK, SUPT.,)	(DIA no. 02BEE001)
)	
Complainant,)	
)	License No. 340782
and)	
)	
HEATHER D. KEPHART,)	Final Order
)	
Respondent.)	

This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. The hearing was conducted before Administrative Law Judge Margaret LaMarche on January 28, 2002. On February 8, 2002, Judge LaMarche issued a Proposed Decision which was served upon the parties and the Board. The Proposed Decision was presented to the Board for consideration on March 1, 2002.

The Board took action to initiate review of the Proposed Decision, and issued Notice of the Board initiated review on March 5, 2002, providing the parties with an to submit briefs regarding whether the proposed sanction was appropriate in light of the findings within the Proposed Decision. No briefs were submitted within the time allowed. On April 19, 2002, the Board conducted its review of the Proposed Decision.

After having examined the Proposed Decision, the Board unanimously voted to adopt the Proposed Decision with the following modification:

The last paragraph on page 6 of the Proposed Decision is stricken, and replaced with the following –

IT IS THEREFORE ORDERED that the Respondent's teaching license shall be **SUSPENDED** with no possibility for reinstatement for two-years from the date of this Order. In order to be eligible for reinstatement of her license at the conclusion of the period of the suspension, the Respondent must:

- a) undergo a comprehensive evaluation regarding professional boundary issues at her own expense, and shall provide the Board with a written report containing recommendations for treatment or education;
- b) undergo a substance abuse evaluation at her own expense, and shall provide the Board with a written report containing recommendations for treatment or education; and
- c) comply with all recommendations made as a result of the evaluations, and sign a release which will enable the Board to communicate with all individuals involved in Respondent's evaluation and treatment.

Proceedings for reinstatement of the Respondent's license may be initiated by Respondent in the form of an application for reinstatement stating facts which, if established, are sufficient to prove: (1) that the Respondent has complied with the terms of this Order, and (2) that it would be in the public interest for the Respondent's licenses to be reinstated. The burden of proof shall be on the Respondent and the Board shall have complete discretion in ruling on the application.

ORDER

THEREFORE, the Proposed Decision, with the modification set forth above, stands as the Board's final ruling in this matter. Accordingly, the Respondent's license shall be suspended for a period of two (2) years from the date of this Order, and reinstatement of the Respondent's license is subject to the conditions set forth above.

Dated this 15th day of MAY, 2002.

Peter Hathaway by cjp
PETER HATHAWAY, VICE-CHAIRPERSON
Board of Educational Examiners

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IOWA BOARD OF EDUCATIONAL EXAMINERS

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FEB 11 2002

INDIANOLA COMMUNITY)	CASE NO. 01-14
SCHOOL DISTRICT,)	DIA NO. 02BEE001
DR. THOMAS NARAK, SUPT.)	
)	
COMPLAINANT,)	
)	LICENSE NO. 430782
AND)	
)	
HEATHER D. KEPHART)	PROPOSED DECISION
)	
RESPONDENT)	

This matter came on for hearing before the undersigned administrative law judge on January 28, 2002 at 9:00 a.m. in conference room 422, Lucas State Office Building. The Complainant, Indianola Community School District, appeared and was represented by attorney Ronald Peeler. The Respondent, Heather D. Kephart, appeared without counsel. The hearing was tape recorded.

A proposed decision may be appealed to the Iowa Board of Educational Examiners (Board) by a party who is adversely affected by the decision. An appeal is commenced by serving a notice of appeal on the Board within 30 days after the issuance of the proposed decision. The notice of appeal must be signed by the appealing party or a representative of that party, and must contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision and order, the relief sought, and the grounds for relief. 282 IAC 11.28.

THE RECORD

The record includes the Complaint filed 4/16/01; the Order extending the 180 day time period, issued 10/15/01; the Hearing Notice; Proof of Service; Complainant's Notice Re: Hearing Participation; Answer; and testimony of the witnesses

FINDINGS OF FACT

1. The Respondent is a licensed teacher in the state of Iowa. The Respondent was initially employed during the 1999-2000 school year as a 9-12 science teacher assigned to the Indianola

Learning Center, a joint program between the Indianola Community Schools and Des Moines Area Community College (DMACC). The Indianola Learning Center serves at-risk students. The Respondent had one year of prior teaching experience in the state of Illinois. (Testimony of Michael Baethke; Respondent)

2. On Friday, January 22, 2001, Michael Baethke, the Director of the Indianola Learning Center, was contacted by the Administrator of the Johnston Boys Home. The Administrator told Mr. Baethke that an individual in his program reported that he had smoked marijuana with a teacher while he was a student at the Indianola Learning Center. The description of the teacher matched the Respondent. After the student was interviewed, the Indianola Police Department and Child Protection were contacted.

On Wednesday, January 30, 2001, the Respondent was interviewed by Mr. Baethke and Mike Hufford, the personnel director for DMACC. Mr. Hufford outlined the student's allegations and asked the Respondent if she could recall any reason why the student would make them. She said that she could not. She was told to go home and think about it and get back to them if she thought of anything. (Testimony of Michael Baethke)

3. The following morning, the Respondent went to Mr. Baethke's office at 7:45 a.m. She told Mr. Baethke that she and the student had been traveling to her brother's basketball game in her car, when the student discovered a cigarette container containing a marijuana cigarette under the seat. The Respondent admitted that the student smoked the marijuana in her presence and that she also took a "puff" of the marijuana. (Testimony of Michael Baethke)

4. The Respondent was placed on administrative leave and resigned the following week. (Testimony of Michael Baethke)

5. The Respondent admitted the allegations of the complaint in her answer and at the hearing. She testified that the fifteen year old male student was in her science class, and they had become friends. The Respondent was twenty-six years old at the time of the incident. She invited the student to her brother's basketball game in Truro, Iowa and had permission from his parents to drive him to the game.

While they were driving, the student found the cigarette holder while adjusting his seat or looking for CDs. The Respondent denied that the marijuana cigarette was hers. She testified that her brother had borrowed her car the night before the

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incident, and she was surprised when the student discovered the cigarette case.

The student found the marijuana cigarette inside the case and asked her if he could smoke it. She initially told him no, but then relented and allowed him to smoke the marijuana when they were on their way home. She admits that she also smoked the marijuana.

After admitting to the incident, the Respondent sought counseling from DMACC's Employee Assistance Program. Through counseling, she was trying to find out why she made such a bad decision and allowed the student to get too close to her. She now realizes that she allowed the professional line between teacher and student to become blurred. The Respondent testified that she was lonely when she moved back to Indianola to teach, after living in Illinois for several years. She started to look to this student as a friend, and she realizes that they both shared too many personal details about their lives. (Testimony of Respondent)

6. The Respondent has a chemistry degree and has been employed as a chemist since March 2001. She expressed great remorse for her actions. She testified that she enjoys teaching and coaching and feels that she is a good teacher who cares about kids. Both of her parents are teachers. She hopes that she will be given the opportunity to return to teaching some day. (Testimony of Respondent)

7. Sandy McCullough is the counselor at the Indianola Learning Center. She testified that the Respondent was an excellent teacher, and was one of the top teachers that she has ever worked with. She acknowledged, however, that the Respondent had a problem with getting too close to students and thinking that she could save them. Ms. McCullough hopes that the Respondent will be given the chance to teach again some day. (Testimony of Sandy McCullough)

CONCLUSIONS OF LAW

The legislature created the Iowa Board of Educational Examiners (Board) with the exclusive authority to develop a code of professional rights and responsibilities, practice, and ethics. Iowa Code section 272.2(1)(2001).

The Board has promulgated rules, which prescribe the professional rights and responsibilities, practice, and ethics

for members of the teaching profession. 282 IAC chapters 12 and 13.

The complaint alleges that by her conduct the Respondent has violated 282 IAC 12.2(1)"b"; 12.3(1)"c"; and 13.5(1)"b."

282 IAC 12.2(1)"b"

282 IAC 12.2(1)"b" provides:

282-12.2(272) Conviction of crimes, sexual, and other immoral conduct with or toward students and alcohol or drug abuse.

12.2(1) It is hereby deemed unprofessional and in violation of the criteria of the board for a member of the teaching profession to be guilty of any of the following acts or offenses:

...

b. The commission of or conviction for a public offense as defined by the Criminal Code of Iowa, provided that the offense is relevant to and affects teaching and administrative performance.

The preponderance of the evidence established that the Respondent violated 282 IAC 12.2(1)"b" when she smoked marijuana with one of her students while driving him home from a basketball game. Although the Respondent was not charged criminally, her admitted actions clearly constitute criminal offenses, i.e. possession and use of marijuana and providing marijuana to a minor. These offenses are relevant to and directly affect her teaching performance because of the direct involvement of her fifteen year old student.

282 IAC 12.3(1)"c"

282 IAC 12.3(1) "c" provides in relevant part:

Ethical practice toward other members of the profession, parents, students and the community

12.3(1) Principle I-commitment to the student. The educator measures success by the progress of each student toward realization of potential as a worthy and effective citizen. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful

formulation of worthy goals. In fulfilling obligations to the student, the educator:

...

c. Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.

The preponderance of the evidence established that the Respondent violated 282 IAC 12.3(1)"c" when she and a student smoked marijuana while she was driving him home from a basketball game. The Respondent's conduct exposed the student to conditions harmful to learning by encouraging and/or condoning drug use and by setting an extremely poor example for the student. Moreover, allowing the student to smoke marijuana was clearly harmful to his health and safety, and the Respondent's use of marijuana while driving directly threatened the student's safety as a passenger in the car.

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282 IAC 13.5(1)"b"

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282 IAC 13.5(1)"b" provides:

282-13.5(26) Administrative and supervisory requirements of educators

13.5(1) Competent educators must possess the abilities and skills necessary to perform the designated task. Each educator shall:

...

b. Supervise district students and school personnel in accordance with law and the policies of the school district.

The preponderance of the evidence established that the Respondent failed to supervise this student in accordance with law and policies of the school district, in violation of 282 IAC 13.5(1)"b." It was illegal for her to allow this student to smoke marijuana and to smoke marijuana herself, while she drove him home from a basketball game. This behavior also violated school policy.

DECISION AND ORDER


The Respondent's violations are egregious breaches of professional responsibility that placed the health and safety of a minor student at risk. To her credit, the Respondent promptly admitted the violations when confronted by the school district and has behaved professionally in responding to this complaint.

Furthermore, the Respondent volunteered additional incriminating details about the incident that were not apparent from the interview of the student. The school district expressed appreciation for her honest admission and believes that the Board should give consideration to her honesty and cooperation.

The Respondent has expressed a great deal of remorse for her actions. She has had some counseling and appears to have gained some insight into the reasons for her actions. She hopes that she will be allowed to teach again at some time in the future.

IT IS THEREFORE ORDERED, that if this proposed decision becomes a final decision, teaching license no. 430782, issued to Heather D. Kephart, shall be REVOKED. Her license shall not be reinstated unless she demonstrates, to the satisfaction of the Board, that the basis for the revocation no longer exists and it is in the public interest for her license to be reinstated. 282 IAC 11.34(2).

Dated this 8th day of February, 2002.



Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division
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